cite cases upholding the retroactive legislation in the "Portal to Portal" Act. The argument is that both the additional wages under the Wage and Hour Law and the increases under the Federal Rent Law were creatures of statute and that, therefore, the latter could be taken away by statute just as the former was. Passing the distinction that the Court of Appeals found, in that the former (Wage and Hour Law) was taken away by Congress which granted it and that the latter (Federal Rent Law) which was granted by Congress is sought to be taken away by a State Legislature which had nothing to do with it in the first instance, it is not a fact that the rent increases were creatures of statute in the same sense as the additional wages. The exact contrary is true. While, in the absence of the Wage and Hour Law, no additional wages would have accrued to the workers, it was precisely the existence of the Federal Rent Act which prevented the landlords from obtaining increases in rents beyond even those which the Administrator granted. To put it somewhat differently, the Wage and Hour Law *aided* the workers, but the Federal Rent Act *injured* the landlords. In the absence of the Act, the landlords could have obtained, as a common law right, such rents as would have been reasonable in the circumstances. The additional wages were truly statutory *grants* or *creations;* the increases in rents marked only a relaxation of the restrictions imposed upon landlords. In providing for increases the Federal Rent Act merely returned, so to speak, a part of the common law rights which the landlords had in the first place; it gave them nothing which they would not have been entitled to without the Act. To say that a statute may take away increases in rents, following a relaxation of imposed ceilings, just as it may take away additional wages given as a grant, is to lose sight of the distinction completely.

The contention of the petitioner and Attorney General that Section 13-a deals with the payment and amount of

rentals *in futuro*, that is, subsequent to May 1, 1950, has no validity. Of course, it deals with *making* of rent payments and the amounts thereof *after* the effective date of the law, but in doing so it deals with rent claims which accrued *prior* to the effective date of the law, and it is the latter that the State Court of Appeals properly struck down. Moreover, the petitioner's and Attorney General's argument here flies in the face of (1) Sec. 204j of the Federal Rent Law, which provided for termination of Federal control, upon takeover by the State, on the *effective* date of the State law; (2) Sec. 204f of the Federal Rent Law, which provided for the survival of rights and liabilities incurred prior to the termination of Federal control; and (3) the Federal survival statute (1 U. S. C. A. 109), which provides for the survival of a liability previously incurred under an expired Federal statute.

The petitions should be denied.

Respectfully submitted,

Barnet Kaprow,
Counsel for Petitioners.

Kramer & Kaprow,
Attorneys for Petitioners.

Dated: October 6, 1950.

(4393A)

FILED
OCT 11 19
CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 350

Cause No. 1

LEON LEIGHTON, MELVIN L. KRULEWITCH and ISIDOR WASSERVOGEL, as Trustees under a Declaration of Trust, dated March 27, 1936, and a Plan of Reorganization for Series B-K mortgage investments, approved by an order of the Supreme Court of the State of New York, entered December 19, 1935,

Petitioners,

against

MORRIS JAWROWER,

Respondent.

Cause No. 2

LEON LEIGHTON, MELVIN L. KRULEWITCH and ISIDOR WASSERVOGEL, as Trustees under a Declaration of Trust, dated March 27, 1936, and a Plan of Reorganization for Series B-K mortgage investments, approved by an order of the Supreme Court of the State of New York, entered December 19, 1935,

Petitioners,

against

MORRIS JAWROWER,

Respondent.

CROSS PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BARNET KAPROW,
Counsel for Petitioners.

KRAMER & KAPROW,
Attorneys for Petitioners.

Dated: October 6, 1950.

INDEX

	PAGE
Opinion Below	2
Jurisdiction	2
Pertinent Provisions of Statutes Involved on Cross Petition	2
The Cases Involved	3
Question Presented on Cross Petition in Cause No. 2	4
Specifications of Error	5
Reasons for Granting the Writ	7
Conclusion	7

CITATIONS

Block v. Hirsch, 256 U. S. 135	6
Bowles v. Willingham, 321 U. S. 503	5
Forbes Pioneer Boat Line v. Board, 258 U. S. 338	7
Martin v. District of Columbia, 205 U. S. 135	6
Matter of Schmoll Inc. v. Federal Reserve Bank, 286 N. Y. 503	7
Testa v. Katt, 330 U. S. 386	7
Twentieth Century Associates v. Waldman, 294 N. Y. 571	5
U. S. v. Commodities Trading Corp., 339 U. S. 121	6
Wasservogel, et al. v. Meyerowitz, et al., 300 N. Y. 125	6, 7

Federal:

62 Stat. 929; 28 U. S. C. Sec. 1257(3) 2

Emergency Price Control Act of 1942, as amended; U. S. Code, Title 50, Appx., Sec. 901, et seq. 3

Housing and Rent Act of 1947, as amended; U. S. Code, Title 50, Appx., Sec. 1894 3

U. S. Constitution, Fourteenth Amendment 4

New York State:

Emergency Housing & Rent Control Law (State Rent Law); Ch. 250, Laws of New York, 1950 .....2, 4, 5

New York City:

Sharkey Law; Local Law No. 73 of City of New York—1949, as validated by Ch. 1 of New York Laws, 1950 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. .....

Cause No. 1

LEON LEIGHTON, MELVIN L. KRULEWITCH and ISIDOR WASSERVOGEL, as Trustees under a Declaration of Trust, dated March 27, 1936, and a Plan of Reorganization for Series B-K mortgage investments, approved by an order of the Supreme Court of the State of New York, entered December 19, 1935,

Petitioners,

against

MORRIS JAWROWER,

Respondent.

Cause No. 2

LEON LEIGHTON, MELVIN L. KRULEWITCH and ISIDOR WASSERVOGEL, as Trustees under a Declaration of Trust, dated March 27, 19[illegible] and a Plan of Reorganization for Series B-K mortga[illegible] investments, approved by an order of the Supreme C[illegible] of the State of New York, entered December 19, 1935,

Petitioners,

against

MORRIS JAWROWER,

Respondent.

CROSS PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

TO: THE HON. CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners pray for the issuance of a writ of certiorari in Cause No. 2 to review the judgment of the Court of Ap-

peals of the State of New York made on July 11, 1950 which upheld the constitutionality of the New York State Emergency Housing and Rent Control Law (Chap. 250 of the Laws of New York of 1950), for convenience hereinafter referred to as the State Rent Law, insofar as it relates to the period after the effective date thereof, May 1, 1950. Petitioners pray that this writ be issued only in the event that this Court grants the petitions of the respondent and Attorney General of the State of New York for writs of certiorari from the determination of the said Court of Appeals insofar as it struck down the Sharkey Law (Local Law No. 73 of the New York City Laws of 1949 as validated by Ch. 1 of the New York State Laws of 1950) and Section 13-a of the State Rent Law. Section 13-a is the so-called retroactive provision which barred Federal rent increases for the period prior to May 1, 1950.

Opinion Below

The opinion of the New York Court of Appeals is officially reported in 301 N. Y. 346-370. The record of the proceedings has been filed by the tenant-respondent herein as petitioner, on his application for a writ of certiorari.

Jurisdiction

The jurisdiction of this Court to review this case is invoked under Title 28 of the United States Code, Section 1257 (3); 62 Stat. 929.

Pertinent Provisions of Statutes Involved on Cross Petition

1. The State Rent Law (Chapter 250 of the New York Laws of 1950), in effect (a) freezes dwelling rents in the City of New York at the March 1, 1949 levels and elsewhere in the State of New York at the March 1, 1950 levels; (b)

bars rent adjustments in favor of landlords, except that it gives the Commission the power to entertain applications for adjustments (not later than December 1, 1950) in instances where expenses (before depreciation) exceed income, or where hardship results on the basis of comparability, or in cases of gross inequities; and (c) bars any claims for the differences between Federally approved rentals and local (Sharkey) Law rentals for any period prior to May 1, 1950, whether or not the Sharkey Law is upheld as valid.

2. The Federal Emergency Price Control Act of 1942, as amended (U. S. Code, Title 50, Appx., Sec. 901, *et seq.*), for convenience hereinafter referred to as the Federal Rent Law, froze rents at 1943 levels and (by the 1949 Act) permitted adjustments "to remove hardships or to correct other inequities." The 1949 Act also provided that "In making and recommending individual and general adjustments to remove hardships or to correct other inequities, the Housing Expediter and local boards shall observe the principle of maintaining maximum rents for controlled housing accommodations, so far as is practicable, at levels which will yield to landlords a fair net operating income from such housing accommodations" (Housing and Rent Act of 1947, Sec. 204, sub. (b), Par. (1), as amended; U. S. Code, Title 50, Appx., Sec. 1894, Sub. (b), Par. (1). The 1949 Law also set up "local option" provisions (Sec. 204j) by which State control or decontrol, or Municipal decontrol could be accomplished.

The Cases Involved

On July 8, 1949, retroactive to March 15, 1948, landlords-petitioners secured a Federal rent increase of $1.32 per months (from $39 to $40.32). The first above-entitled cause (involving the constitutionality of the Sharkey Law) was a summary proceeding to dispossess the tenant-respondent

for failure to pay the increased rental of $40.32 for the month of February, 1950 and arrears of $1.32 per month for November and December, 1949 and January, 1950. The second above-entitled cause (involving the constitutionality of the State Rent Law) was an action to recover the Federally approved rent of $40.32 for May, 1950, plus arrears of $1.32 per month for March and April, 1950. By invalidating the Sharkey Law, the State Court of Appeals upheld the right to collect $40.32 for February, 1950 and the arrears of $1.32 for November and December, 1949 and January, 1950 (Cause No. 1). By invalidating Section 13-a of the State Rent Law, the State Court of Appeals upheld the right to collect $1.32 rental arrears for March and April, 1950 (Cause No. 2). By upholding the State Rent Law prospectively, that is to say, for the period after its effective date on May 1, 1950, the State Court of Appeals refused to allow petitioners, on and after May 1, 1950, to collect $40.32 as the rental of the apartment occupied by the tenant-respondent.

This cross-petition, therefore, brings up the question of the correctness of the decision by the State Court of Appeals in upholding the prospective provisions of the State Rent Law.

Question Presented on Cross Petition in Cause No. 2

Do the prospective provisions of the State Rent Law (Chapter 250 of the New York State Laws of 1950) deprive petitioners of their property without due process of law, in contravention of the Fourteenth Amendment of the United States Constitution?

Specifications of Error

In the State Court of Appeals, petitioners urged that the State Rent Law was violative of the Due Process clause of the Fourteenth Amendment of the Federal Constitution, not only in respect to its retroactive provisions (Section 13-a of the State Rent Law), but also in respect to its prospective provisions. In upholding the State Rent Law prospectively as a valid exercise of the police power, the State Court erred in rejecting the point made by the petitioners that the State Rent Law, in effect, brought about an absolute freeze of rents until not later than December 1, 1950, when adjustment applications may be entertained in cases where out-of-pocket expenses, before depreciation, exceed rental income or where hardship results in instances of comparability, or in cases of gross inequities.

No rent law has gone so far as to put an absolute freeze on rents for a period in the future, especially in the light of continuing ameliorating Federal legislation permitting rent adjustments. Even the voided Sharkey Law provided for immediate adjustments. The New York State Commercial and Business Rent Control Laws also provided for immediate fair and reasonable rentals to be fixed either by arbitration or judicial determination (see *Twentieth Century Associates* v. *Waldman,* 294 N. Y. 571).

The State Rent Law may also be compared with the original Federal Rent Law (50 U. S. C. Appx. Supp. II, Sec. 901) which was upheld in *Bowles* v. *Willingham* (321 U. S. 503). This Court, in the *Bowles* case, observed that the Federal Rent Control Law provided for "adjustments for such relevant factors as he [the Administrator] may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs" (at p. 514), and for the right to protest any action of the Administrator (at p. 516). The State Law, as already noted, does not

make provision for immediate rent adjustments in cases of property losses, hardships or inequities. It does not even make provision for reconsideration of the Federal increases already obtained, that is to say, increases allowed to compensate for property operating losses as of a past period, as in the cases at bar. The Administrator, in fact, is not required to make regulations in respect thereto before December 1, 1950, and even then, any adjustment, when ultimately made, may not be retroactive (Section 4 (4)), as in the case of the Federal Rent Law. Considering the time (after December 1, 1950) that may be required to process a rent adjustment application, the foregoing, we submit, amounts to an absolute freeze of rents for an indefinite period and does not make for the due process found to be present in the *Bowles* case.

The absolute rent freeze upheld by the State Court of Appeals is also in conflict with *Block* v. *Hirsh* (256 U. S. 135), where this Court upheld the rent statute because "machinery is provided to secure to the landlord a reasonable rent" (at p. 157) and *U. S.* v. *Commodities Trading Corp.* (339 U. S. 121), where this Court upheld the general rule of ceiling prices provided there was "room for special exceptions." A statute of the nature here under consideration "pressed to a certain height, might amount to a taking without due process of law. *Martin* v. *District of Columbia;* 205 U. S. 135, 139." (Mr. Justice Holmes in *Block* v. *Hirsh, supra*).

In the cases at bar, the petitioners had a vested right under the Federal rent increase order. That right was in respect to the rentals due and owing from and after the effective date of the Federal rent increase order (November 15, 1948) and continuing in the future as long as the respondent (a statutory tenant) chose to remain in possession (see *Wasservogel, et al.* v. *Meyerowitz, et al.,* 300 N. Y. 125, at p. 133). The State Court was bound to accept the said rent increase order and to act upon it, but could not review

or overrule it for supposed invalidity (*Testa* v. *Katt*, 330 U. S. 386; *Wasservogel et al.* v. *Meyerowitz, et al.*, 300 N. Y. 125; *Matter of Schmoll, Inc.* v. *Federal Reserve Bank*, 286 N. Y. 503). In the light of the foregoing, it is at least doubtful whether the State Rent Law, in nullifying the Federal rent increase order, is constitutional prospectively (Cf. *Forbes Pioneer Boat Line* v. *Board*, 258 U. S. 338).

Reasons for Granting the Writ

If the Court should determine to grant the tenant-respondent's and Attorney General's petitions for writs of certiorari to review the judgment of the State Court of Appeals, invalidating the Sharkey Law and Section 13-a of the State Rent Law, it would appear that the entire State Rent Law should be reviewed, so as to correct any error of the State Court of Appeals in respect to its entire decision. It is for this reason that we are submitting his conditional cross-petition.

Conclusion

It is respectfully submitted that in the event this Court should grant the petitions of the respondent and Attorney General, for writs of certiorari, this petition for a writ of certiorari should likewise be granted so that the entire question can be reviewed by this Court and a determination reached as to the validity of the laws under review.

Respectfully submitted,

BARNET KAPROW,
Counsel for Petitioners.

KRAMER & KAPROW,
Attorneys for Petitioners.

Dated: October 6, 1950.

FILED
OCT 3 195
CHARLES ELMORE CR

(33040) No. 306, 346

+ 350 IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

EDWIN H. STERN, JR.,
Petitioner,
against
TEEVAL CO., INC.,
Respondent.

MORRIS JAWROWER,
Petitioner,
against
LEON LEIGHTON, *et al.*,
Respondent.

(2 causes)

BRIEF FOR THE CITY OF NEW YORK, AS *AMICUS CURIAE*, IN SUPPORT OF THE PETITIONS OF STERN AND JAWROWER FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND THE MUNICIPAL COURT OF THE CITY OF NEW YORK

JOHN P. MCGRATH,
Corporation Counsel of the City of New York,
Attorney for the City of New York, Amicus Curiae.

ANTHONY CURRERI,
Deputy Assistant Corporation Counsel, of Counsel.

17 APPEAL PRINTING CO., INC., 130 CEDAR STREET, NEW YORK, WO 4-3033

INDEX

	PAGE
Opinion Below	2
Jurisdiction	2
Question Presented	2
Statement	2
Specification of Error	3
Conclusion	6

Citations

Cases:

Dickson v. *Uhlmann Grain Co.*, 288 U. S. 188 (1933)	5
Reid v. *Colorado*, 187 U. S. 137 (1902)	4, 6
Savage v. *Jones*, 225 U. S. 501 (1912)	6
Sinnott v. *Davenport*, 22 How. 227 (1895)	6
Teeval Co., Inc. v. *Stern*, 301 N. Y. 346 (1950)	2, 4

Statutes:

United States Constitution:

Article VI 2, 4

Federal Statutes:

Emergency Price Control Act of 1942, as amended in 1946 (Public Law 548, 60 Stat. 664) 5

PAGE

Housing and Rent Act of 1947 (50 U.S.C.A. War App. §§1881-1902) 5

Housing and Rent Act of 1947, as amended (50 U.S.C. Appendix 1881, *et seq.*) 2, 5

New York State Statute:

Laws of 1950, Chapter 1 3

Laws of 1950, Chapter 250 ..... 2, 3

New York City Local Laws:

Local Law No. 73 of 1949 (Sharkey Law) 2, 3, 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

EDWIN H. STERN, JR.,
Petitioner,
against
TEEVAL CO., INC.,
Respondent.

MORRIS JAWROWER,
Petitioner,
against
LEON LEIGHTON, *et al.*,
Respondent.

(2 causes)

BRIEF FOR THE CITY OF NEW YORK, AS *AMICUS CURIAE,* IN SUPPORT OF THE PETITIONS OF STERN AND JAWROWER FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND THE MUNICIPAL COURT OF THE CITY OF NEW YORK

The City of New York, as *amicus curiae,* respectfully requests that this brief be considered in support of the petitions of *Stern* and *Jawrower* for writs of certiorari to review the judgment of the Court of Appeals of the State of New York, entered in the above-entitled causes upon remittiturs to the Municipal Court of the City of New York.

Opinion Below

The opinion of the Court of Appeals covering all of these causes is reported in 301 N. Y. 346.

Jurisdiction

The authority for submission of this brief *amicus curiae* is contained in Rule 27, par. 9, of the Rules of the Supreme Court of the United States.

Question Presented

Were those provisions of New York City Local Law No. 73 of 1949 (Sharkey Law) which were invalidated by the Court of Appeals of the State of New York in conflict with the Federal Housing and Rent Act of 1947, as amended (50 U.S.C. Appendix 1881, *et seq.*), and hence violative of Article VI of the Constitution of the United States?

Statement

The petitions for writs of certiorari and the cross-petition filed by the respondent, Teeval Co., Inc., fully set forth the facts and the pertinent statutes. It is not the purpose of this brief to add to the labors of the Court by duplicating them.

The City of New York is vitally interested, nevertheless, in the decision of the question presented. Between October 7, 1949, the date of original enactment of the Sharkey Law, and May 1, 1950, the effective date of the New York State Rent Control Law (L. 1950, Ch. 250), some 40,000 tenants in the City of New York relied upon the provisions of the Sharkey Law in resisting their landlords' demands for rents higher than those which they had paid

on March 1, 1949. When the Court of Appeals invalidated those portions of the Sharkey Law which formed the basis of the tenants' defense against demands for increased rent, it left these tenants open to actions at law for the recovery of sums of money which, in individual cases, constituted sizeable amounts and brought them face to face with the prospect of eviction for non-payment of the increased rent demanded during that period.

It is true that the Sharkey Law, as validated by Laws of 1950, Chapter 1 of the State of New York, expired April 30, 1950. Obviously however, if the Sharkey Law did not conflict with the Federal Housing and Rent Act of 1947, as amended, and this Court so holds, then the threat of eviction for failure to pay rents above the March 1, 1949 level, which were demanded by landlords between October 7, 1949 and May 1, 1950, is removed. This follows regardless of the decision which may be reached on the question involving the validity of Section 13-a of the New York State Rent Control Law (L. 1950, Ch. 250).

Specification of Error

In declaring that "so much of the validated Sharkey Law as undertook to forbid collection of rent increases granted by the Federal Housing Expediter was void by operation of the supremacy clause of the Federal Constitution", the Court of Appeals erred in the following respects:

1. The provisions of the Federal Housing and Rent Act established maximum rents only and did not bar concurrent action on state or local level in the field of rent control.

2. The order of the Housing Expediter, acting pursuant to authority conferred by the Federal Housing and

Rent Act, which adjusted the maximum rent at a new and higher level, did not confer a vested right upon the landlord to demand or receive that amount as rent.

3. The Sharkey Law did not in terms "forbid the collection of rent increases granted by the Federal Housing Expediter"; rather, it laid down additional local requirements that landlords in the City of New York had to meet before the maximum rent level in existence on March 1, 1949 could be raised.

The principles of law which will aid in the solution of the problem are not disputed. It is not denied that if Congress acts properly to supersede or suspend the police powers of the states, and its purpose to effect that result is clearly manifested, then *any* state or local legislation in the field will be stricken as violative of the Supremacy Clause (Article VI) of the Constitution of the United States. *Reid* v. *Colorado,* 187 U. S. 137 (1902).

However, the Housing and Rent Act of 1947, as amended, is not such an act of Congress. The Court of Appeals below recognized (301 N. Y. 146, at p. 364) that "Emergency control of rents and evictions would seem to be an affair for concurrent Federal and State action, *at least until the field is pre-empted by Congress and so long as local legislation does not conflict with the letter or policy of any Federal enactment.*" (Emphasis supplied.) The Federal question that comes to this Court, therefore, is whether the Sharkey Law, a local attempt to act concurrently with Federal law in the field of rent control, did in fact conflict with the latter.

The respondent may, nevertheless, argue that Congress did pre-empt the field of rent control and, consequently, that the Sharkey Law is invalid regardless of whether conflict between that law and the Federal law did exist. The short answer to this contention, if raised, is contained

in the history of the Federal legislation. The 1946 amendment to the Emergency Price Control Act of 1942 (Public Law 548, 60 Stat. 664) added the following provision:

> "While maximum rents are in effect under this Act with respect to housing accommodations in any defense rental area, such housing accommodations shall not be subject to rent control by any state or local government."

This provision was not included in the Housing and Rent Act of 1947 (50 U.S.C.A. War App. §§1881-1902), although many of the provisions of the prior law were included. It was not included in the Act of 1948 (Public Law 464—80th Congress, Ch. 161, 2nd Session), nor was it included in the Act of 1949, which is now in issue. The removal of language expressing an intention to pre-empt the field is a clear manifestation of the intention of Congress *not* to suspend the police powers of the state.

Turning then to the basic question of conflict, it seems clear that the true meaning of the key words involved in this dispute must be ascertained before the principles of law culled from cases in other fields may be applied. The Federal Housing and Rent Act authorized the establishment of maximum rents and prohibited the demand of rents in excess thereof. Nowhere is there any proscription of the demand of rents below the maximum.

The Federal purpose to prevent or inhibit inflation was served by placing a ceiling on rents. But, unless this ceiling is also considered a floor, state legislation operating under the federal ceiling is not in conflict therewith. Analogous situations in other fields of legislation support the proposition that local law may be more restrictive than federal law in the same field, without conflicting with the latter. *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188

(1933); *Reid* v. *Colorado*, 187 U. S. 137 (1902); *Savage* v. *Jones*, 225 U. S. 501 (1912).

The order of the Housing Expediter adjusting the maximum rent, when viewed in this context, did no more than raise the Federal ceiling on the rent the landlord could demand without running afoul of the *Federal* law. The error committed in the Court below was in construing the order of the Housing Expediter as a *grant* of a rent increase, for it is clear that if the words, "maximum rent," are given their ordinary meaning, the landlord received no vested right in the increase by virtue of the Expediter's order. In consequence, the Sharkey Law, which required the landlord to comply with certain of its provisions before the higher rent could be demanded, took nothing from the landlord nor was it so repugnant to the Federal Law that the two "could not consistently stand together." *Sinnott* v. *Davenport*, 22 How. 227 (1895).

CONCLUSION

It is respectfully urged that the writs of certiorari should issue. The point involved is as novel as it is important, particularly to those citizens of the City of New York who placed their faith in the Sharkey Law. The Court of Appeals struck down the Sharkey Law and based its determination on a construction of a Federal statute and the Constitution of the United States. That determination should be reviewed by this Court.

Dated: New York, October 2, 1950.

Respectfully submitted,

JOHN P. MCGRATH,
Corporation Counsel of the
City of New York,
Attorney for the City of New York,
Amicus Curiae.

Enid